IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

WP(C).No. 25757 of 2006(N)

AGAINST THE ORDER IN IA 471/06 IN
OS.173/2005 of MUNSIFF COURT, CHANGANACHERRY

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PETITIONER:

KERALA KSHETHRA SAMRAKSHNA SAMITHI,
BRANCH NO.1417, VAZHAPPALLY EAST MURI,
VAZHAPPALLY EAST VILLAGE REP.BY ITS PRESIDENT
N.RADHAKRISHNAN, S/O.NARAYANA KURUP, AGED 64,
RESIDING AT SREYAS, VAZHAPPALLY EAST MURI,
VAZHAPPALLY EAST VILLAGE, CHANGANACHERRY.

BY ADV. SRI.K.GOPALAKRISHNAN UNNITHAN
SRI.G.ANANTHANARAYANAN
SRI.B.RAJEEV KOYICKAL

RESPONDENTS:

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1. P.K. RAJU, S/O. KITTAN, AGED 50 YEARS,
AJU VIHAR, VAZHAPPALLY EAST MURI,
VAZHAPPALLY EAST VILLAGE, VAAZHAPPALLY P.O.,
CHANGANACHERRY.

2. LOLA KUMARI, W/O.P.K. RAJU,
AGED 45 YEARS, AJU VIHAR, VAZHAPPALLY EAST MURI,
VAAZHAPPALLY EAST VILLAGE, VAZHAPPALLY P.O.,
CHANGANACHERRY.

3. REJIKUMAR, S/O. GOPI ACHARI,
AGED ABOUT 30 YEARS, PANOOR, VAZHAPPALLY
EAST MURI, VAZHAPPALLY EAST VILLAGE,
VAZHAPPALLY P.O., CHANGANACHERRY.

4. DIPIN, AGED 20 YEARS,
PANOOR, VAZHAPPALLY EAST MURI, VAZHAPPALLY
EAST VILLAGE, VAZHAPPALLY P.O.,
CHANGANACHERRY.

5. PRADEEP, S/O. KAMALASANAN ACHARI,
AGED ABOUT 30 YEARS, PANOOR, VAZHAPPALLY
EAST MURI, VAAZHAPPALLY EAST VILLAGE,
VAZHAPPALLY P.O., CHANGANACHERRY.

BY ADV. SRI.M.P.MADHAVANKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of plaint in O.S.No.173/2005 before the Munsiff's Court, Changanacerry.

Ext.P2:- True copy of the I.A.No.743/2005 in O.S.No.173/2005, before the Munsiff's Court, Changanacherry.

Ext.P3:- True copy of the order dated 21-5-2005 in I.A.743/2005 in O.S.No.173/2005 before the Munsiff's Court, Changanacherry.

Ext.P4:- True copy of the Commissioner Report in O.S.No.173/2005 before the Munsiff's Court, Changanacherry.

Ext.P5:- True copy of B diary in O.S.No.173/2005 before the Munsiff's Court, Changanacherry.

Ext.P6:- True copy of I.A.No.413/2006 in O.S.No.173/2005 before the Munsiff's Court, Changanacherry.

Ext.P7:- True copy of the plaint in O.S.No.203/2005 before the Munsiff's Court, Changanacherry.

Ext.P8:- True copy of the Commission Report in O.S.No.203/2005 before the Munsiff's Court, Changanacherry.

Ext.P9:- True copy of the I.A.889/2005 in O.S.No.203/2005 before the Munsiff's Court,Changanacherry.

Ext.P10:- True copy of the order dated 29-11-2005 in I.A.No.889/2005 in O.S.203/2005 before the Munsiff's Court, Changanacherry.

Ext.P11:- True copy of the I.A.No.471/2006 in O.S.No.173/2005 before the Munsiff's Court, Changancherry.

Ext.P12:- True copy of the objection in I.A.No.471/2005 in O.S.No.173/2005 before the Munsiff's Court, Changanacherry.

Ext.P13:- True copy of the written argument on I.A.No.471/2006 in O.S.173/2005 before the Munsiff's Court, Changanacherry.

Ext.P14:- True copy of the order dated 12-4-2006 in I.A.No.471/2006 in O.S.No.173/2005 before the Munsiff's Court, Changanacherry.

Ext.P15:- True copy of the I.A.No.986/2006 in O.S.No.173/2005 before the Munsiff's Court, Changanacherry.

Ext.P16:- True copy of I.A.No.607 in O.S.No.173/2005, before the Munsiff's Court, Changanacherry.

Ext.P17:- True copy of the counter affidavit filed by the 1st respondent to the I.A.No.743/2005 in O.S.No.173/2005, before the Munsiff's court, Changanacherry.

Ext.P18:- True copy of written statement in O.S.No.173/05 before the Munsiff's Court, Changanacherry.

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.25757 OF 2006

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Dated this the 19th day of December,2006

JUDGMENT

Petitioner is the plaintiff and respondents the defendants in O.S.173/05 on the file of Munsiff Court, Changanassery. This petition is filed under Article 227 of Constitution of India challenging Ext.P14 order whereunder the claim of petitioner for police aid to enforce the order of injunction granted in I.A.743/05 was dismissed.

2. Learned counsel appearing for petitioner and respondents were heard.

3. The argument of learned counsel appearing for petitioner was that an order of temporary injunction was granted on 21.5.05 and that order is binding on respondents and they are not obeying that order and therefore police protection is to be granted to enforce the order of temporary injunction. Learned Munsiff did not pass a final order in I.A.471/06. What is now subsisting is an

order of ex parte temporary injunction passed before issuing notice. First respondent has filed an objection on behalf of other respondents also. Under Rule 3A of Order XXXIX of Code of Civil Procedure when an order of temporary injunction is granted before notice, court is bound to pass a final order before the expiry of thirty days from the date of the order. It was not done. Learned Munsiff has to hear and pass a final order in I.A.743/05. Petitioner is not entitled to get an order for police aid to enforce the order of ex parte temporary injunction.

4. The learned Munsiff is directed to dispose of I.A.743/05 as expeditiously as possible. If the temporary order of injunction is made absolute after petitioner is at liberty to move for police protection afresh. If so Munsiff to decide whether petitioner is to be granted police protection as sought for.

5. Learned counsel appearing for petitioner submits that Ext.P15 application was filed for

taking action against respondents alleging that respondents have violated the order of injunction and made constructions. It is for the Munsiff to consider whether there was violation of orders of injunction and whether any action is to be taken. The learned Munsiff has to pass appropriate order in that application also.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006